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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,201	05/29/2001	Charles Young	30454-1001	7863

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PEACOCK MYERS, P.C.
201 THIRD STREET, N.W.
SUITE 1340
ALBUQUERQUE, NM 87102

EXAMINER

NGUYEN, KIMBINH T

ART UNIT PAPER NUMBER

2671

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/870,201	Applicant(s) YOUNG, CHARLES	
	Examiner Kimbinh T. Nguyen	Art Unit 2671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-16 and 18-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-10, 18-20 and 29-36 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 11-14 and 16 is/are rejected.
- 7) ☒ Claim(s) 5, 15 and 23-28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to amendment filed 10/19/05.
2. Claims 1-6, 8-16, 18-36 are pending in the application.

Drawings

3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because drawings contain informalities (figs. 5-7). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(a) as being anticipated by Cyber-Journal of Sport Marketing "An Analysis of In-game Advertising for NCAA Basketball".

Claims 1 and 11, Cyber-Journal discloses a method of collecting audience recognition information concerning a video presentation (page 3, paragraph 1), the method comprising the steps of: displaying an entire video presentation to a plurality of subjects (page 3 paragraph 3); subsequently inquiring of each of the subjects by

Art Unit: 2671

computer (page 4 paragraph 4, survey instrument) whether each of a plurality of still images (imbedded sponsor mentions) obtained from the video presentation are recognized by each of the subjects (page 3 paragraphs 1 and 2), the inquiring step taking place after place after the displaying step (page 3 paragraph 3); and for each of the still images, a central computer for tabulating a percentage of the subjects reporting recognition by remembrance of the still image in the inquiring step (page 4 paragraph 4).

Claim 12, Cyber-Journal discloses wherein the displaying and inquiring apparatus comprise a computer local to each subject (page 4 paragraph 4, survey instrument).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-4, 6, 13-14, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyber-Journal of Sport Marketing œAn Analysis of In-game Advertising for NCAA Basketball in view of Waechter et al. U.S. Patent No. 4,943,963.

Claim 2, Cyber-Journal discloses wherein the displaying and inquiring steps are performed on a computer local to each subject (page 4 paragraph 4). However, Cyber-Journal does not disclose wherein the tabulating step is performed on a central computer networked to each local computer. This is disclosed in Waechter et al in

Art Unit: 2671

column 1 lines 40-67 and column 2 lines 1-30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system of Waechter with the system of Cyber-Journal. Cyber-Journal surveying a group of people and determining statistics. It would be obvious to use a central computer to tabulate the statistics because this would allow cheaper surveying equipment to be used for local means.

Claim 3, Although Cyber-journal does not specifically disclose using the Internet, it does disclose using a local area network. It would have been obvious at the time the invention was made to use the internet as the network with the system of Cyber-journal because this would allow the results to be seen by more people and have more subjects participate.

Claims 4 and 14, Cyber-Journal discloses an automated method of collecting audience recognition information concerning a video or graphic presentation (page 3 paragraph 1), the method comprising the steps of: displaying a video or graphic presentation to a plurality of subjects (page 3 paragraph 3); after the displaying step, obtaining by an apparatus local to each subject audience recognition information from each of the subjects concerning a plurality of still images obtained from the video presentation (page 4 paragraph 4), tabulating the results of the obtaining step for all subjects (page 4 paragraph 4). However, Cyber-Journal does not disclose communicating results of the obtaining step via a network to a central computer. This is disclosed in Waechter et al in column 1 lines 40-67 and column 2 lines 1-30. It would have been obvious to one of ordinary skill in the art at the time the invention was made

Art Unit: 2671

to use the system of Waechter with the system of Cyber-Journal. Cyber-Journal surveying a group of people and detecting statistics. It would be obvious to use a central computer to tabulate the statistics because this would allow cheaper surveying equipment to be used for local means.

Claims 6 and 16, Cyber-Journal discloses wherein the obtaining step comprises inquiring of each of the subjects whether each of a plurality of still images from a video presentation are recognized by each of the subjects (page 3 paragraph 1 and 3), and the tabulating step comprises tabulating a percentage of the subjects reporting recognition of each of the images in the inquiring step (page 4 paragraph 4).

Claim 13, Cyber-Journal does not disclose communicating results generated by the inquiring apparatus to a central computer over the internet. This is disclosed in Waechter et al in column 1 lines 40-67 and column 2 lines 1-30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system of Waechter with the system of Cyber-Journal. Cyber-Journal surveying a group of people and determining statistics. It would be obvious to use a central computer to tabulate the statistics because this would allow cheaper surveying equipment to be used for local means. Although Cyber-Journal does not specifically disclose using the internet, it does disclose using a local area network. It would have been obvious at the time the invention was made to use the internet as the network with the system of Cyber-Journal because this would allow the results to be seen by more people and have more subjects participate.

Allowable Subject Matter

8. Claims 5, 15, 23-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 8-10, 18-20 and 29-36 are allowed.

10. The following is a statement of reasons for the indication of allowable subject matter:

Prior art of reference fails to disclose after the generating step, creating an abbreviated presentation containing a subset of the images and displaying to a second plurality of subjects.

Also prior art of reference does not disclose wherein a brightness of portions of the presentation are determined by results of the tabulating step.

Response to Arguments

11. Applicant's arguments filed 10/19/05 have been fully considered but they are not persuasive, because in the Cyber-Journal reference shows the subjects were shown still images from the video "239 subjects viewed a 20 minute video of a University men's basketball game", this method would be the same as showing the 239 subjects still images obtained from the video "the researchers enlisted the assistance of a local television station; professional video technician and a sports announcer of a local television station". Thus the rejection of claims are maintained.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimbinh T. Nguyen whose telephone number is (571) 272-7644. The examiner can normally be reached on Monday to Thursday from 7:00 AM to 4:30 PM. The examiner can also be reached on alternate Friday from 7:00 AM to 3:30 PM.

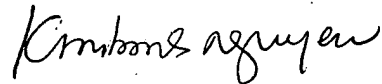
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ulka Chauhan can be reached at (571) 272-7782. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Art Unit: 2671

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 6, 2006

A handwritten signature in cursive script, appearing to read "Kimbinh T. Nguyen".

KIMBINH T. NGUYEN
PRIMARY EXAMINER